

THE HON'BLE MR. JUSTICE D.S.R. VARMA

AND

THE HON'BLE MR. JUSTICE V. ESWARAIAH

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WRIT APPEAL NO. 29 OF 2006

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JUDGMENT: (per Sri D.S.R. Varma, J)

This writ appeal is directed against the judgment dated 04-01-2006 in Writ Petition No. 27537 of 2005 passed by a learned single Judge of this Court wherein and whereby a direction was issued to the Government to dispose of the petition submitted by the 6th respondent – Upasarpanch within a period of three weeks from the date of receipt of a copy of the Order. The appellant herein was also given liberty to approach the 1st respondent with a copy of the order immediately.

The appellant is the writ petitioner. He was elected as the Sarpanch of Cherlapally Gram Panchayat, Nalgonda Mandal and District. On the allegation that he has resorted to certain irregularities, initially he was removed by the competent authority i.e. the District Collector, the 3rd respondent herein vide order dated 28-04-2005. The said action has been challenged by the appellant before the appellate authority i.e., the Commissioner, Panchayat Raj, who after hearing the matter, had set aside the orders of removal vide orders dt.28-07-2005 and remitted the matter back to the 3rd respondent to take appropriate action according to law. He has also directed the 3rd respondent to furnish a copy of the enquiry report to the appellant herein.

In other words, the order passed by the primary authority was set aside and the matter was remanded to the primary authority for fresh consideration on the grounds incorporated in the said order. Subsequently, on 11-08-2005 the District Collector (Panchayat Wing) issued proceedings directing the 6th respondent – Upasarpanch by name Smt. R. Mangamma, who was appointed on that day as

Incharge Sarpanch, to handover the charge to the appellant herein. It was directed categorically that the appellant shall take over the complete charge of the post of Sarpanch.

Here there is a controversy as to whether the charge was handed over by the 6th respondent – Upasarpanch as directed by the District Collector pursuant to the Order dated 11-08-2005 or not despite the specific order issued by the Collector.

Learned counsel appearing for the appellant vehemently contends that charge in fact was handed over to the appellant herein pursuant to the orders of the District Collector. But the learned Government Pleader as well the learned counsel appearing for the 6th respondent – Upasarpanch denies the said factum. But it is brought to the notice of the Court that the Government, through proceedings in Memo No. 12637/PTS II/A-1/05-I dated 23-08-2005 issued certain orders on the revision petition filed by the 6th respondent – Upasarpanch. In the very subject, the appellant herein was referred to as 'M. Shanker - removed & reinstated into the post of Sarpanch'. Even in the order passed therein, the 6th respondent herein was referred to as Ex-incharge Sarpanch only. It is an indicative factor that the 6th respondent, who was initially kept incharge of the post of Sarpanch pursuant to the orders of removal of the appellant obviously handed over the charge to the appellant and consequently became former/Ex-incharge Sarpanch, meaning further thereby that the charge had been effectively handed over to the appellant.

Now the grievance of the appellant is that pursuant to the orders of the Government dated 23-08-2005, he was directed to handover the charge again to the 6th respondent by the District Collector – the 3rd respondent herein.

It is rather incomprehensible as to how the 3rd respondent – District Collector, having knowledge of the whole proceedings, particularly the proceedings issued by the appellate authority and having himself directed the 6th respondent to handover the charge to the appellant and also having knew the orders dated

23-08-2005 passed by the 1st respondent – Government, issued the orders once again directing the appellant herein to hand over the charge again to the 6th respondent. Perhaps we are of the view that the serious irregularities allegedly committed by the appellant might have prompted the 3rd respondent to pass the impugned order.

However, we are not going to express any opinion nor the observations by this Court can be understood as opinion on merits. But still the propriety requires that when once by virtue of the orders of the Government dated 23-08-2005, the appellant was reinstated as Sarpanch, he cannot again be asked to hand over the charge to the 6th respondent without there being any justification.

The learned Single Judge appreciated all the facts on record and having regard to the facts and circumstances of the case, perhaps with an intention to safeguard the interests of all the parties, directed the Government to dispose of the petition filed by the 6th respondent expeditiously, within three weeks from the date of receipt of a copy of the order and gave liberty to the appellant herein to approach the 1st respondent with a copy of the order.

Learned Government Pleader ensures expeditious hearing as directed by the learned single Judge.

In view of the said statement, we are of the view that it is expedient to direct the 3rd respondent to ensure reinstatement of the appellant as Sarpanch of the Village forthwith pending disposal of the revision petition before the 1st respondent.

It is the general feeling that a person who allegedly resorted to have committed serious irregularities cannot be directed to function as a Sarpanch. In fact, this Court, at this stage cannot go into the merits of the case since the revision filed by the 6th respondent is already pending before the 1st respondent and the revisional authority

can go into the said factual position.

However, having regard to the facts and circumstances of the case, we direct the appellant to function as Sarpanch, pending disposal of the revision petition, de hors the involvement in financial matters whatsoever. It appears that subsequently another show cause notice was issued to the appellant with regard to some other irregularities and those proceedings may go on in accordance with law independently.

With the above observations, the writ appeal is disposed of.

(D.S.R. VARMA, J)

(V. ESWARAIAH, J)

Dated: 10..01..2006

ks/msv